Amendments to the Drawings

The attached sheet of drawings includes new FIG. 3, which has been drawn from US Patent 5,959,529 into the present application in accordance with 37 C.F.R. § 1.57(f). Hence, no new matter has been added.

Attachments following last page of this response:

New Sheet (1 page)

Remarks

Claims 1, 3-10, and 12-23 are pending. Claims 2 and 11 have been canceled and claims 22 and 23 have been added by the present amendment. Claims 1, 10, 17, 22, and 23 are in independent form.

Claims 1, 10, and 17 have been amended to correct minor typographical informalities.

Paragraph [0020] has been amended under 37 C.F.R. § 1.57(g) to comply with the requirements of 37 C.F.R. § 1.57(b) as set forth in Vol. 69, No. 182 of the Federal Register for incorporating US Patent 5,959,529 by reference. Further, new paragraphs [0019.1], [0035.1]-[0035.7], and FIG. 3 (with changed reference numerals for the sake of clarity) have been drawn from US Patent 5,959,529 into the present application in accordance with 37 C.F.R. § 1.57(f). Thus, new paragraphs [0019.1], [0035.1]-[0035.7], and FIG. 3 have been incorporated by reference and their additions do not introduce new matter into the present application.

In the office action mailed October 4, 2004, claims 2 and 11 were indicated as being allowable if rewritten in independent form and to overcome the rejections under 35 U.S.C. § 112 discussed below. In acknowledgement of the indication of allowable subject matter, claims 2 and 11 have been canceled and subject matter therefrom added into independent claims 1 and 10. Therefore claims 1 and 10, as amended, are allowable.

The specification was objected to as containing various informalities. Paragraphs [0001] and [0026] of the specification have been amended to address the Examiner's concerns.

The status of the application under 35 U.S.C. § 120 was objected to as being improper. Paragraph [0001] has been amended to recite that this "application is a continuation-in-part of ... U.S. application serial no. 09/841,154." Also, a substitute declaration is submitted herewith in accordance with 35 U.S.C. § 26.

Claims 1-21 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the rejection contends that 1) the parent application (i.e., U.S. application serial no. 09/841,154) fails to describe a "programmable processor" as claimed, and 2) claim 17 relates to a portable medical monitoring device that

performs functions that do not appear to be performed by medical monitoring device 54 and includes elements that do not appear to be included in medical monitoring device 54.

To begin with, Applicant submits that claims 1-9 do not recite a programmable processor, nor do they depend from claim 17. As such, the rejection of claims 1-9 under 35 U.S.C. § 112, first paragraph, is unsupported, and thus improper. Accordingly, Applicant requests that the rejection of claims 1-9 be withdrawn.

In regard to the contention that the parent application serial no. 09/841,154 (hereinafter "the '154 application") fails to describe a "programmable processor," applicant respectfully submits that ample support for the "programmable processor" of both claims 10 and 17 is found in the '154 application, as filed.

Claim 10 relates to at least one programmable processor that is configured to perform operations. Support for such a programmable processor is found throughout the '154 application in implementations of central unit 58. For example, paragraph [0018] describes the establishment of a communication link between medical monitoring device system 52 and central unit 58. Paragraph [0019] describes that central unit 58 processes data to (typically) make a final decision regarding "whether the medical monitoring device 54 may be activated for rendering medical monitoring device service." Paragraph [0020] describes that this decision includes "obtaining third-party authorization from one or more of the third-party sources 72." Paragraph [0025] describes that central unit 58 can issue "an activation signal to the medical monitoring device system 52" when appropriate.

According to well-established Federal Circuit precedent, "[t]he test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed *reasonably conveys* to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language (emphasis added)." *See, e.g., In re Edwards*, 196 USPQ 465 (CCPA 1978). The description of implementations of central unit 58 clearly satisfies this standard and thus provides ample support for the programmable processor recited in claim 10. Further, additional support for claim 10 is found in new paragraphs [0035.1]-[0035.7] and FIG. 3. As such, applicant requests that the rejection of claim 10 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claim 17 relates to a portable medical monitoring device that includes a programmable processor configured to perform operations. Support for such a programmable processor is found throughout the '154 application in implementations of medical monitoring device 54. In particular, paragraph [0013] describes that a "medical monitoring device 54 is preferably a portable or remote monitoring unit," and paragraph [0026] describes the enabling of "the processing of data within a microprocessor in the medical monitoring device 54" using a "software 'on' switch."

The description of implementations of medical monitoring device 54 thus provides ample support for the programmable processor recited in claim 17. Additional support for claim 17 is found in new paragraphs [0035.1]-[0035.7] and FIG. 3. As such, this first ground for rejecting claim 17 under 35 U.S.C. § 112, first paragraph, is improper.

In regard to the contention that claim 17 relates to a portable medical monitoring device that performs functions that do not appear to be performed by medical monitoring device 54 and includes elements that do not appear to be included in medical monitoring device 54, support for such a portable medical monitoring device is found throughout the '154 application in implementations of medical monitoring device 54.

For example, paragraph [0026] describes that "communications links [are] built into the medical monitoring device 54" and that "communication between the medical monitoring device 54 and the central unit 58" occurs. New FIG. 3 shows and new paragraph [0035.3] describes a portable monitoring unit 112 that includes a manual input device 132, a display 134, and an audio and/or visual communicator 136. The inclusion of a programmable processor in medical monitoring device 54 is discussed above.

The description of implementations of medical monitoring device 54 thus provides sufficient support for the elements and functions recited in claim 17. As such, this second ground for rejecting claim 17 under 35 U.S.C. § 112, first paragraph, is improper. Accordingly, applicant requests that the rejection of claim 17 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claim 3 was objected to as unclear. Claim 3 has been amended to address the Examiner's concerns.

Claims 10-16 were rejected under 35 U.S.C. 112, 2nd paragraph as indefinite. Claim 10 has been amended to address the Examiner's concerns.

Independent claim 17 was rejected under 35 U.S.C. § 102(b) as anticipated by WIPO Publication No. WO 99/22230 to Johnson (hereinafter "Johnson"). As amended, claim 17 relates to a portable medical monitoring device that is configured to monitor one or more physiological aspects of a patient.

Johnson neither describes nor suggests such a medical monitoring device. In particular, Johnson's information device 12 is a data storage and encoding device, such as a "Smart" card. It stores an individual's insurance information, emergency records, and health care history, but does not monitor a physiological aspect of a patient.

Accordingly, claim 17, and the claims dependent therefrom, are allowable over Johnson.

New claim 22 relates to a computer-based method for controlling access to a medical monitoring system. The method includes receiving information indicating that a remote monitoring device seeks access to a monitoring service hosted by a central unit, determining whether the remote monitoring device is authorized to access the monitoring service, and based on a result of the determination, selectively issuing an activation signal to the remote monitoring device. The remote monitoring device is configured to monitor one or more physiological aspects of a patient. The determination is based at least in part on authorization data received from a third-party source.

Johnson neither describes nor suggests such a method for controlling access to a medical monitoring system. In particular, Johnson neither describes nor suggests receiving information indicating that a remote monitoring device that is configured to monitor one or more physiological aspects of a patient seeks access to a monitoring service hosted by a central unit. Instead, Johnson's system receives data (such as an individual's insurance information, emergency records, and health care history) from an information device 12. Information device 12 does not monitor one or more physiological aspects of a patient.

Accordingly, claim 22 is allowable over Johnson.

New claim 23 relates to a medical monitoring system centered at a central node. The medical monitoring system includes one or more communications links configured to facilitate communications with a plurality of remote monitoring devices and one or more third-party

authorization sources and at least one programmable processor configured to perform operations. The remote monitoring devices are configured to monitor one or more physiological aspects of a patient.

Johnson neither describes nor suggests such a medical monitoring system. In particular, Johnson neither describes nor suggests a medical monitoring system that includes one or more communications links configured to facilitate communications with a plurality of remote monitoring devices that are configured to monitor one or more physiological aspects of a patient. Instead, Johnson's system communicates with information devices 12 that store and encode data such as an individual's insurance information, emergency records, and health care history. Information device 12 does not monitor one or more physiological aspects of a patient.

Accordingly, claim 23 is allowable over Johnson.

Enclosed is a check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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